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IN THE

SUPREME COURT OF THE

UNITED STATES

October Term 1969

No. 989

SOL SIEGEL and BESSIE SIEGEL,

Petitioners,

vs.

CITY OF LOS ANGELES,

Respondent.

PETITIONERS' REPLY BRIEF

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1.

THE CITY'S ARGUMENTS RE COMPENSABILITY OF GOODWILL CONTRADICT THE RECORD AND AUTHORITY.

On the issue of compensability of goodwill, Respondent (hereafter the City) has made two

arguments in its brief (p. 4) which lack foundation in the record or in reality. 1/

1. The City says that the Siegels ". . . could have relocated their businesses", but the record at bench belies that argument. No such evidence is found in the record. To the contrary, the Court will recall that the instant condemnation arises out of a street widening which caused land to be taken and buildings to be demolished along Hoover Avenue, for many blocks. See map attached to the Complaint in Condemnation, appearing at p. 19 of the Certified Record herein. The map depicts graphically how the street widening cut into properties fronting on Hoover Avenue for blocks on end.

Therefore, query: how does one go about relocating his business, where most, if not all, suitable buildings in the area have been demolished?

The cold, harsh fact is that the Siegels' business could not be relocated. The City's suggestion of relocation, thus bears a distinct kinship to Marie Antoinette's suggestion to starving Parisians that they eat cake.

1/ It bears noting that the City does not dispute the substantiality of the questions presented, and effectively concedes the widespread impact of the present unfortunate state of the law of just compensation as applied to business losses caused by expropriation.

2. The City's second fallacious argument that "[b]usiness [g]oodwill [i]s [s]eldom, if [e]ver, [d]estroyed by a [t]aking . . . " is an attempt to exorcise reality by bald assertion. Neither the record herein nor any data ascertainable from scholarly or other publications, lend any support to that assertion. On the contrary, such data as are available after painstaking factual investigations by various governmental agencies, compel the conclusion that the contrary is true: a majority of business proprietorships are permanently destroyed by a taking of the land upon which they are located. 2/

Finally, Petitioners note the City's ingenious argument (made for the first time in its brief filed in this Court) that a statutorily defined and judicially protected property right is subject to confiscation simply because it can be characterized as an "expectation". 3/ But every property

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2/ See authorities cited in Petition for Certiorari, fn. 2, 3, 4 and 5 at pp. 8-10 thereof.

3/ Significantly, when California governmental entities want to tax goodwill, they experience no difficulty in treating goodwill as "property" rather than an "expectation". See Miller & Lux v. Richardson (1920), 182 Cal. 115, 127-128, 187 Pac. 411, which taxes goodwill as of course. The significance lies in the fact that California's powers of taxation extend only to "property". Calif. Const., Art. 13, §1, Calif. Revenue & Taxation Code §201.

interest known to the law is in that sense an "expectation" that the owner thereof will be permitted to exercise his dominion and control over, or to enjoy the use and benefit of the particular interest, without uncompensated invasion by others. The owner's right to have his "expectation" protected by the legal institutions of his society, is foundational to the whole concept of private property, 4/ and the Fifth Amendment simply establishes that legal protection as against governmental entities.

Nor does the City's argument find support in the authorities cited by the City. Navigation control cases such as U.S. v. Rands (1967), 389 U.S. 121, do not rest on any sweeping and simplistic notion that "expectancies" are not "compensable", but rather on the principle that in those cases the government owns an antecedent right to improve, maintain and control the means of navigation. The riparian owner is held in such cases not to own the navigable waters, and hence he is not compensated when the government exercises dominion and control over what the government owns. See U.S. v. Willow River Power Co. (1945), 324 U.S. 499, 508-509.

4/ The reference to "property" in the just compensation clause of the Fifth Amendment, conceives of property not as " . . . the physical thing with respect to which the citizen exercises his rights recognized by law", but as " . . . the group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it." U.S. v. General Motors (1944), 323 U.S. 373, 377-378.

But surely the City is not suggesting that it somehow has a comparable antecedent proprietary interest in the goodwill of Sol Siegel's dime store.

2.

THE CITY'S ARROGANT DISREGARD OF THIS COURT'S DECISION IN U.S. V. GENERAL MOTORS IS SYMBOLIC OF WHAT IS WRONG WITH THE TREATMENT METED OUT TO PETITIONERS BELOW.

Nothing that Petitioners can say would speak as eloquently of the disregard of Petitioners' constitutional rights in the case at bench, as the short shrift given by the City to this Court's decision in U.S. v. General Motors (1944), 323 U.S. 373. (See p. 7 of the City's brief, where the City dismisses General Motors as expounding an "alleged 'doctrine'" which - according to the City - "has not been followed at all"). 5/

5/ The City's disdain for the "alleged 'doctrine'" of General Motors apparently manifests itself only when the City is a condemnor. When the City is a condemnee, it sees nothing wrong with following General Motors. Cf. U.S. v. Certain Parcels, etc. (1945), 63 Fed. Supp. 175, 188 [16].

For once, Petitioners must agree with the City: the applicable constitutional principle "has not been followed at all" in the case at bench. Neither has the just compensation command of the Fifth Amendment, nor the due process clause of the Fourteenth.

All the more reason why the instant Petition should be granted.

Respectfully submitted,

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